



STATE ETHICS COMMISSION BULLETIN

Volume XXVIII Issue 2

Summer 2006

Nearly 100% of Filers Complete Statements of Financial Interests on Time

Calendar Year 2005 marked the fifth year that the State Ethics Commission offered electronic filing and 73% of all filers elected to file electronically.

This year, 4,638 elected officials, public employees and candidates were required to file Statements of Financial Interests (SFI). All but 139 filers filed by the May deadlines. Of this number, 121 promptly filed after receiving a Formal Notice of Lateness from the Commission. Of the remaining 18, five individuals presented mitigating circumstances for not timely filing.

The following seven individuals filed late, signed disposition agreements and paid fines based on the number of days their SFI was filed late:

- Former Department of Fish and Game Assistant Commissioner Robert Austin filed 6 days late and paid a \$50 fine.
- Former MA Community Development Finance Corporation President Milton Benjamin filed 16 days late and paid a \$200 fine. Benjamin's fine was doubled because he was a repeat late filer.
- Former MWRA Budget Director Carl Erickson filed 9 days late and paid a \$50 fine.
- Former MA Technology Park Corporation Director of Health Care Technologies Kenneth Farbstein filed 13 days late and paid a \$100 fine.
- Former Executive Office of Public Safety Director of Legislative Ser-

vices Jennifer Flagg filed 2 days late and paid a \$50 fine.

- Former Dedham District Court Assistant Clerk Mary Tufo filed 6 days late and paid a \$50 fine.

- Former MA Convention Center Authority Project Director Howard Davis filed 41 days late and paid a \$500 fine.

The following six individuals have NOT filed:

Fines for Late Filing of SFIs

- 1-10 days late \$ 50
- 11-20 days late \$ 100
- 21-30 days late \$ 200
- 31 days or more \$ 500
- Non-filing of an SFI \$2,000

Penalties for the repeated late submission of an SFI are doubled. In addition, the law provides that employees who do not file may not perform their duties or be paid.

- Former MA Office for Victim Assistance Director of Finance and Administration Mary Au.

- Former MA Bay Community College Executive Director of College Relations Mary Becotte.

- Former UMass Boston Acting Vice Chancellor for Institutional Advancement Thomas Fencil.

- Former Springfield Technical Community College Dean of Student Services Gregory James.

- Former Executive Office of Health and Human Services Chief Administrative Officer Antonia Jimenez.

- Former Board of Elevator Appeals Member Anthony F. Leonard Jr.

There are 349 agencies that employ individuals required to file an annual SFI. This year, 238 agencies achieved 100% by the May deadlines. The Commission is especially thankful to the liaisons that work closely with the Commission to ensure that all employees timely file. A [list](#) of the agencies that achieved 100% compliance is available at www.mass.gov/ethics.

Commission Extends Gratitude to Francis S. Moran, Jr. for Consultant Work

The Massachusetts State Ethics Commission extends its deepest gratitude to Francis S. Moran, Jr. for the time, energy and thoughtfulness he so generously gave to the Commission last year.

For almost a year, Mr. Moran devoted on a *pro bono* basis hundreds of hours of his time meeting with each commissioner and member of the staff and reviewing the office's operations, procedures and case files.

The result of Mr. Moran's hard work was a comprehensive report designed to make the Commission's operations more efficient and effective. After thoroughly reviewing the report, the Commission adopted the vast majority of the report's recommendations. Since the year began, the Commission and staff have implemented the changes.

Mr. Moran, a resident of Framingham, retired as the Executive Director of the Boston Bar Association in 2002. He is a retired Air Force colonel, who spent eight years as a military judge.

Table of Contents

Thanks to Francis J. Moran, Jr.	1
Nearly 100% File on Time	1
Letter from the Executive Director	2
Recent Enforcement Matters	2
Staff Notes	2
Section by Section	3
Online Training Program	4
New Advisory Issued	4
Litigation Update	4
Advisory Opinions	4

From the Executive Director

"Taking Appropriate Action"

Since 1978, the Ethics Commission has been the civil enforcement agency for violations of the conflict of interest law.

Periodically, when state or local agencies become aware of an alleged violation of the conflict of interest law, their staff will ask whether they must refer the allegation to the Commission. More generally, they ask what options are available in these situations.

One option is for the agency to conduct its own internal investigation. While this approach may provide the state or local agency with some measure of control, it has significant disadvantages often including a perceived lack of impartiality.

Another option is to hire an outside consultant. This option may mitigate any perceived lack of impartiality, however it can be costly and doesn't necessarily bring finality to the matter.

Often, the most effective option is to refer the matter to the Commission or to combine one of the other two approaches with a referral to the Commission.

While referral is not mandated, only the Commission has the authority and expertise and the responsibility as the state's civil enforcement agency for investigating violations of the law and taking appropriate action. In addition, unless the Commission has reviewed the allegations, they remain subject to review and prosecution by the Commission.

The Commission's goal is to promote public confidence in government's integrity. It does so by providing advice and education and by vigorously and fairly enforcing violations of the law. Only advice from the Commission offers binding legal protection from prosecution and only review of alleged violations provides a final determination.

Peter Sturges

Commission Members Summer, 2006

E. George Daher, Chair
J. Owen Todd, Vice-Chair
Tracey Maclin
Matthew N. Kane
Jeanne M. Kempthorne

Carol Carson
Editor

Recent Enforcement Matters

The Ethics Commission investigates numerous cases alleging violations of the conflict of interest and financial disclosure laws each year. While the Commission resolves most matters confidentially, it resolves certain cases publicly.

A disposition agreement is a voluntary written agreement entered into between the subject and the Commission in which the subject admits violating the law and agrees to pay a civil penalty. Disposition agreements are matters of public record once a case is concluded.

The Commission does not comment on any matter under investigation, nor does the office confirm or deny that it has received a specific complaint. The identity of any complainant is kept confidential.

Full texts of Disposition Agreements can be found on the Commission's website at www.mass.gov/ethics.

In the Matter of Peter Arlos - The Commission approved a Disposition Agreement in which former Berkshire County Treasurer Peter Arlos admitted violating G.L. c. 268A, § 13 and agreed to pay a \$1,000 fine and to forfeit \$1,200 in compensation for participating in a matter in which he had a financial interest. The Disposition Agreement concluded public proceedings against Arlos. In June 2000, Arlos, as treasurer/custodian of the County Retirement Board by virtue of his position as County Treasurer, voted, in a 3-2 vote, to approve a three percent wage increase for himself. As a result of the raise, he received an additional \$1,200 in compensation. Arlos believed that the County Retirement Board was not a county agency, thus his actions as a member of the County Retirement Board were not governed by G.L. c. 268A.

The Commission found, however, that that the County Retirement Board was a county agency and its members are subject to c. 268A. By participating in voting to approve a wage increase, Arlos violated G.L. c. 268A, § 13.

In the Matter of John DeWald - The Commission issued a Disposition Agreement in which Rockland Finance Committee member John DeWald admitted violating the state's conflict of interest law. DeWald used his position to attempt to persuade a town attorney to settle a default foreclosure of property. DeWald agreed to pay a civil penalty of \$2,000. DeWald, an attorney, violated G.L. c. 268A, §§ 17(c) and 23(b)(2) when he contacted Rockland tax title attorney Laura Powers at the request of attorney Sandy Lederman. Lederman, who is a friend of DeWald, represented Ken Crosby whose eight-acre parcel was taken through default foreclosure by the town. According to the Disposition Agreement, in a phone call in January 2005, DeWald introduced himself as the chairman of the Finance Committee and tried to convince Powers to settle the case for back taxes and attorney fees. Powers, who felt pressured by DeWald's call, declined to do so, stating that the town wanted to keep the land.

In the Matter of Joseph Flaherty - The Commission fined Mendon Parks Commissioner Joseph Flaherty \$1,000 for violating the state's conflict of interest law, M.G.L. c. 268A, by using his position to enable his son to attend the Parks Department's summer youth camp as a junior counselor. Flaherty served on the Parks Commission from 2000 to 2004, then was re-elected in May 2005. The Mendon

Continued on page 3

Staff Notes

Northeastern student Paul Murray is serving as an intern in the Commission's Enforcement Division. Murray, a resident of Cambridge, is a senior majoring in criminal justice.

Continued from page 2

Parks Department provides a summer camp for residents 12 years old and younger at a cost of \$150 per week. Junior counselors, ages 13 to 15, attend camp unpaid, receive free lunch every day and gain valuable experience that could lead to a paid senior counsel position in the future. In early 2005, the Mendon Parks Commission limited the number of junior counselors to 10. Flaherty was not a member of the Commission when this decision was made. Flaherty's 15-year-old son, who had served as a junior counselor in 2003 and 2004, was one of 25 applicants for the 10 junior counselor openings. He was not selected. Once Flaherty was re-elected to the Parks Commission, he expressed his concerns about the number of junior counselors and the hiring process. The Parks Commission, at a meeting at which Flaherty did not attend, voted to keep the number of junior counselors at 10. On Monday, July 11, 2005, Flaherty brought his son to the camp and told the newly appointed camp director that his son was there to be a junior counselor that week and for two additional weeks. Flaherty's son attended the camp as a junior counselor for at least 10 days during these three weeks. By bringing his son to camp

and telling the director his son was there as a junior counselor, Flaherty violated § 23(b)(2).

[In the Matter of Robert Nelson](#) - The Commission fined former Dunstable Selectman Robert Nelson \$2,000 for violating the state's conflict of interest law, G.L. c. 268A, by participating as a selectman in an affordable housing project on land he was selling to the developer. According to the Disposition Agreement, Nelson had a purchase and sales agreement with Dracut-based developer Frank Gorman to sell to Gorman 3.5 acres of land in Dunstable on which Gorman planned to construct a 30-unit affordable housing apartment building under G.L. c. 40B, the state's low and moderate income housing law. The sale was contingent on Gorman obtaining a permit for the project. Nelson abstained at selectmen's meetings but participated in discussing the project with other town officials via email. By recommending that the town's affordable housing quotas not include accessory apartments, that the fire department's involvement was not necessary as part of the selectmen's review and that the Zoning Board of Appeals,

rather than selectmen, had responsibility to review the proposal to ensure adherence to state and federal codes as well as by suggesting a specific attorney with 40B experience represent the town's interests concerning the project, Nelson violated § 19.

[In the Matter of Peter Pender](#) - The Commission fined former Clinton Building Inspector Peter Pender \$2,000 for violating §19 of the state's conflict of interest law, G.L. c. 268A, by reviewing construction plans and issuing a building permit for property owned by Pender and his wife. In October 2004, Pender's wife submitted to him a building permit application and associated construction plans for property owned by both of them. Pender reviewed the plans to determine that the estimated construction costs were reasonable, calculated the building permit fee to be \$672 based on the estimated \$84,000 in construction costs, reviewed the plans for code compliance and issued a building permit.

[In the Matter of Michael Rostkowski](#) - The Commission fined former Massachusetts Department of Environmental Protection (DEP) Bureau of Waste Management Analyst Michael Rostkowski \$10,000 for violating § 5(a) of the state's conflict of interest law, M.G.L. c. 268A, by receiving compensation from Mass Environmental Associates (MEA) in connection with a Wilmington landfill project in which Rostkowski participated while he was a DEP analyst. The owner of the Maple Meadow Landfill located in Wilmington and DEP entered into an agreement regarding the closing of the landfill. MEA was hired by the landfill owners to conduct the closure. As a DEP employee, Rostkowski assessed the landfill and recommended enforcement/investigative actions. Rostkowski left DEP in February 2001 and worked for MEA until April 2004. While working for MEA, Rostkowski monitored MEA employees and equipment at the landfill and made recommendations regarding storm water control measures.

SECTION BY SECTION THE CONFLICT OF INTEREST LAW, G. L. c. 268A

- Section 5(a) of the conflict law prohibits a public employee from acting as agent or attorney for or receiving compensation from a third party in connection with any particular matter in which the state is a party or has a direct and substantial interest and in which he participated as a state employee.
- Section 13 prohibits a county employee from officially participating in matters in which he has a financial interest.
- Section 17(c) of the conflict of interest law prohibits a municipal employee from acting as an attorney for anyone other than the town in connection with a particular matter in which the town is a party or has a direct and substantial interest.
- Section 19 prohibits a municipal employee from officially participating in matters in which he has a financial interest.
- Section 23(b)(2) prohibits a public employee from using or attempting to use his position to secure for himself or others an unwarranted privilege of substantial value not properly available to similarly situated individuals.

Online Training Program Introduced

The State Ethics Commission provides several types of educational materials, all of which are available online at www.mass.gov/ethics.

The latest addition to the Commission's website is an [online training program](#) that will provide state agencies with a tool to educate their employees about the restrictions the conflict of interest law places on them.

The program consists of 25 units, each of which provides the user with an explanation of a section of the law, a hypothetical scenario, a question about the scenario and four possible answers. Choosing the correct answer allows the user to move to the next question; choosing an incorrect answer will require the user to read an explanation, then return to the list

of answers to select again. At the end of the program, users can print out a page with their name and the date certifying that they have completed the program.

State agencies are encouraged to use the online training program to remind current employees of their responsibility to comply with the conflict of interest law and to provide new hires with an introduction to the law.

It is important to keep in mind that educational materials are general in nature and are not exhaustive reviews of the conflict law. For specific questions, public officials and employees should contact their agency or municipal counsel or the Legal Division of the State Ethics Commission at (617) 371-9500.

New Educational Advisory Issued: Consultants and Attorneys who Provide Services to Government Agencies may be Public Employees Subject to the Conflict of Interest Law

The Commission provides guidance and advice to thousands of state, county and municipal employees and private sector individuals about the application of the conflict of interest law. In FY 06, the Communication and Public Education Division provided educational seminars for over 3,700 public employees and officials. In addition, thousands more visit the Commission's website, www.mass.gov/ethics to find answers to questions they may have.

The website has proved to be a valuable resource for public employees and officials, as well as citizens, in understanding the conflict of interest law and the [educational materials](#) page is one of the website's most visited pages.

Educational materials provide advice about the application of the conflict of interest law based on formal advisory opinions and enforcement actions. Materials include primers about each section of the law for state and municipal officials, advisories that address various topics, such as political activity and nepotism, summaries of the law for various municipal

boards and committees and other miscellaneous publications.

The most recent addition to the Commission's educational materials is [Advisory 06-01: Consultants and Attorneys who Provide Services to Government Agencies may be Public Employees Subject to the Conflict of Interest Law](#).

This advisory codifies, for the first time, existing Commission opinions that discuss how the conflict of interest law applies to consultants and attorneys who personally perform services for state, county and municipal government. It should be noted that the advisory does not include any new interpretation of the law.

The definition of a public employee in the conflict of interest law is very broad. Generally, individuals who contract with public entities to personally perform services are public employees subject to the conflict of interest law. As discussed in the advisory, the Commission uses a multi-factor analysis to determine when a consultant or an attorney is a public employee subject to the conflict of interest law.

Litigation Update

Jane Doe v. State Ethics Commission

The Executive Director, and by delegation, the Commission's Legal Division attorneys, have special assistant attorney general status. This status permits Legal Division attorneys to represent the Commission in court proceedings, under the oversight of the Office of the Attorney General.

Jane Doe appealed the Superior Court's decision compelling her to testify in a deposition in relation to a matter under investigation by the Commission's Enforcement Division. This matter is pending in the Appeals Court. Materials in this matter are impounded.

The Commission has commenced a civil action in the Suffolk Superior Court against Louis A. Mandarini, Jr. in order to collect a civil penalty owed by the defendant, Mandarini. Mandarini, while a member of the Energy Facilities Siting Council, failed to file his Statement of Financial Interest for calendar year 2003 in a timely manner and incurred a civil penalty which he has not paid.

Advisory Opinions

[EC-COI-06-2](#) The Hampshire Council of Governments is a "county agency" for purposes of G. L. c. 268A and a "governmental body" as defined in G. L. c. 268B. The Franklin Regional Council of Governments is a "municipal agency" for the purposes of G. L. c. 268A.

[EC-COI-06-3](#) Where a state board member is also a municipal employee, the municipality's financial interest in a particular matter before the state board will not, in and of itself, bar the state board member from participating as such in the particular matter, because a municipality is not a business organization within the meaning of G. L. c. 268A. In the current opinion, the Commission reversed its prior rulings, to the extent that they hold otherwise, that a municipality is a business organization, which had followed Conflict Opinion No. 613, Attorney General Quinn (1974). The Commission also concluded that counties are not business organizations.